

UNITED STATES COURT OF APPEALS

DEC 12 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

GARY LEE MCCOLPIN,

Plaintiff - Appellant,

v.

GARY STOTTS, Secretary of
Corrections and DAVID R. MCKUNE,
Warden,

Defendants - Appellees.

No. 96-3324
(D. Ct. No. 93-CV-3411)
(D. Kan.)

ORDER AND JUDGMENT*

Before TACHA, BALDOCK, and LUCERO, Circuit Judges.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

This appeal is from an order of the district court denying pro se appellant's motion to reconsider the district court's order dismissing his claim for a denial of

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

religious liberty. On appeal, the appellant reiterates the conclusory allegations that were made in the district court that he has been denied his rights under the First, Eighth, and Fourteenth Amendments of the Constitution of the United States with respect to the practice of his religious beliefs. We affirm.

In an order dated October 25, 1996, the district court provisionally granted appellant leave to proceed in forma pauperis on appeal pending receipt and examination of appellant's financial records.¹

In his pro se brief on appeal, appellant alleges that appellees have placed unconstitutional restrictions on his freedom to exercise his religious beliefs. After examining all of the pleadings, briefs, and other documents filed in the district court and in this court on appeal, we hold that appellant has failed to present a non-frivolous argument on the law and facts in support of the issues raised on appeal. See 28 U.S.C. § 1915(e)(2); Coppedge v. United States, 369 U.S. 438 (1962). We therefore affirm the order of the district court denying reconsideration of the order dismissing appellant's action. We further hold that the filing of this appeal is deemed a "prior occasion" pursuant to the requirements of 28 U.S.C. § 1915(g) and affirm the order of the district court for substantially the reasons stated in the order of the district court dated August 26, 1996,

¹Appellant has an outstanding balance for the filing fee of this appeal and is reminded of his continuing obligation to forward partial payments to the Clerk of the District Court in accordance with the district court's order of February 11, 1997.

dismissing the action, granting defendant's motion for summary judgment and denying plaintiff's motion for specific performance. AFFIRMED.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge